



11 FEB 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. BOX 1450  
ALEXANDRIA, VA 22313-1450  
www.uspto.gov

Malcolm K. McGowan, Ph. D.  
Burns, Doane, Swecker, & Mathis, L.L.P.  
P.O. Box 1404  
Alexandria, Virginia 22313-1404

In re Application of	:	
FRANKE et al.	:	
Application No.: 10/698,439	:	
Filing Date: 03 November 2003	:	DECISION ON
Attorney Docket No.: 016921-167	:	
For: NEW INTERGENIC AND	:	PETITION
INTRAGENIC INTEGRATION	:	
SITES FOR FOREIGN GENE	:	UNDER 37 CFR 1.137(b)
EXPRESSION IN	:	
RECOMBINANT S. GORDINI	:	
STRAINS	:	

Applicant's "Petition For Revival of an International Application For Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)," filed in the United States Patent and Trademark Office on 03 November 2003 is **GRANTED**.

### **BACKGROUND**

On 22 February 2001, applicant filed international application number PCT/US01/05493, claiming priority of an earlier U.S. application 60/184,645, filed on 24 February 2000. A demand was filed electing the United States of America on 21 September 2001. Accordingly, the thirty month period for paying the basic national fee in the United States expired at midnight on Monday, 26 August 2002, with the result that the international application became abandoned as to the United States of America on that date.

On 03 November 2003, the present petition was submitted with a petition fee of \$1330.00.

### **DISCUSSION**

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by (1) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, (2) a proposed response, (3) the petition fee required by law (37 CFR 1.17(m)), and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995).

With regard to item (1), the petition includes a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

With regard to item (2), the filing of the present continuation-in-part application under 35 U.S.C. 111 is accepted as the appropriate response under 37 CFR 1.137(b)(2). See MPEP 711.03(c).

With regard to item (3), applicants have furnished the petition fee of \$1330.00.

With regard to item (4), a terminal disclaimer is not required as application was filed after 08 June 1995.

Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

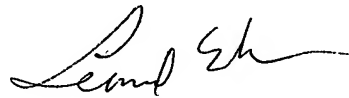
### **CONCLUSION**

The petition to revive the application abandoned under 37 CFR 1.137(b) is **GRANTED**. International application PCT/US01/05493 is being revived for the purposes of continuity only. Since continuity has been established by this decision reviving the international application, the international application is again abandoned in favor of the present continuation-in-part application having Serial Number 10/698,439.



Michael La Villa  
Detailer  
Office of PCT Legal Administration

Telephone: (703) 308-6162  
Facsimile: (703) 308-6459



Leonard E. Smith  
PCT Legal Examiner  
Office of PCT Legal Administration

Telephone: (703) 308-6461  
Facsimile: (703) 308-6459